

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 20

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PAUL T. JACKSON, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Paul T. Jackson ("Jackson" or "Defendant"), was admitted to the North Carolina State Bar on August 29, 1998, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Jackson was engaged in the practice of law in the State of North Carolina as an Assistant District Attorney in Prosecutorial District 11B in Smithfield, Johnston County, North Carolina.

CLAIM FOR RELIEF

4. On June 12, 2011, Elio Santos De La Cruz ("De La Cruz") was arrested on charges of felony possession of cocaine, felonious restraint, and second degree rape of a mentally disabled woman ("N S-C"), in *State v. De La Cruz*, Nos. 11 CRS 53550 and 53562 (Johnston County).

5. A rape kit collected from N S-C was sent to the North Carolina State Bureau of Investigation's Crime Laboratory ("SBI Crime Lab") for DNA testing on or about June 17, 2011.

6. On July 11, 2011, a Johnston County Grand Jury returned true bills of indictment against De La Cruz charging him with the felonies referenced in Paragraph 4 above.

7. On July 14, 2011, De La Cruz's attorney filed a request for voluntary discovery pursuant to N.C. Gen. Stat. § 15A-903(a), and alternative motion for discovery seeking, among other things, the results of the DNA testing referenced in Paragraph 5 above, as well as any exculpatory evidence.

8. De La Cruz remained in pretrial confinement pending the felony charges referenced in Paragraphs 4 and 6 above.

9. Jackson was assigned to prosecute the charges against De La Cruz referenced in Paragraphs 4 and 6 above.

10. De La Cruz's attorney filed motions to dismiss based on speedy trial grounds on May 8, 2012, October 30, 2012, and December 5, 2012.

11. In all three motions to dismiss, De La Cruz cited the SBI Crime Lab's "unnecessary delay in processing the DNA from the 'Rape Kit'" as the cause for the delay of his trial.

12. At a November 9, 2012 hearing on De La Cruz's motion to dismiss, Jackson advised the court that he had sent the SBI Crime Lab a letter requesting the DNA analysis of the rape kit referenced in Paragraph 5 above be expedited, but that he was still awaiting the SBI Crime Lab's report.

13. At a December 6, 2012 hearing in De La Cruz's case, the DNA issue was again raised and at the conclusion of the hearing, the following colloquy took place:

THE COURT: All right. Let's schedule it for January 7[, 2013]. We'll hear the defendant's speedy trial motion then. That will give you a few weeks to make some inquiry of the lab and see exactly where they are with the analysis. They may have it done.

MR. JACKSON: Should I subpoena somebody from the lab?

THE COURT: That's up to you.

14. On January 10, 2013, during a hearing on De La Cruz's motion to dismiss, the following colloquy took place regarding the status of the DNA report and De La Cruz's motion to dismiss:

THE COURT: How long has he been in custody now?

MR. WALKER: Five hundred eighty days.

THE COURT: When was the last time you talked to the lab?

MR. JACKSON: Probably after the last time we were on, last month.

THE COURT: Did they give you any idea?

MR. JACKSON: I'm hoping it will be soon. Right now, when you talk to the molecular genetic[s] section, they're saying we're retooling. They are substituting better equipment, more enhanced. I'm hoping soon. It seems like they should get it any day. I can't answer your question when it's going to be returned.

15. At the conclusion of the January 10, 2013 hearing, the Superior Court judge entered an order directing the SBI Crime Lab to complete the DNA analysis in De La Cruz's case by February 4, 2013 or produce a representative at De La Cruz's administrative setting in February 2013 to "explain to the Court why the analysis has yet to be completed."

16. Jackson had not made inquiry of the SBI Crime Lab or its counsel about the status of the DNA analysis in De La Cruz's case prior to the January 10, 2013 hearing.

17. Jackson's response to the court, referenced in Paragraph 14 above, that he had "[p]robably" talked to the SBI Crime Lab about De La Cruz's case after the December 2012 hearing was false.

18. Jackson's statement to the court, referenced in Paragraph 14 above, in response to the court's question whether the SBI Crime Lab had given any indication of when the DNA report in De La Cruz's case would be forthcoming, that "when you talk to the molecular genetic[s] section, they're saying we're retooling," was false.

19. On January 23, 2013, Jackson received information that the SBI Crime Lab had completed the DNA analysis of the rape kit for N S-C on or about September 12, 2012, and had uploaded its report to its secure electronic information management system, the Case Object Repository, on or about that date.

20. Jackson's office had instituted a system to download and notify the assigned prosecutors of the reports available on the SBI Crime Lab's Case Object Repository, referenced in Paragraph 19 above, but the report concerning De La Cruz's case was not downloaded when it became available on or about September 12, 2012.

21. The SBI Crime Lab's September 12, 2012 DNA report excluded De La Cruz as the contributor of the sperm fraction from the vaginal swabs of N S-C.

22. On January 24, 2013, Jackson received a copy of the SBI Crime Lab's DNA report in De La Cruz's case, referenced in Paragraph 21 above, and delivered a copy of the report to De La Cruz's attorney.

23. On that same date referenced in Paragraph 22 above, Jackson dismissed the rape and restraint charges against De La Cruz, citing the fact the sperm fraction from the vaginal swabs of N S-C did not match De La Cruz.

24. Jackson dismissed the cocaine possession charge against De La Cruz on January 28, 2013, citing the DNA finding and the fact De La Cruz had served more time awaiting trial than he could receive for conviction on the cocaine possession charge.

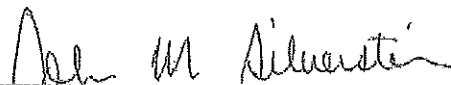
THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By failing to make reasonably diligent inquiry to learn of the availability of the SBI Crime Lab's September 12, 2012 DNA report, and by failing to contact the SBI Crime Lab between the December 6, 2012 hearing and the January 10, 2013 hearing to verify the status of the DNA analysis in De La Cruz's case, Defendant failed to act with reasonable diligence and promptness in representing the State of North Carolina in violation of Rule 1.3, failed to make a reasonably diligent effort to comply with a legally proper discovery request in violation of Rule 3.4(d)(2), failed to make a reasonably diligent inquiry for and timely disclosure of exculpatory evidence to De La Cruz's attorney in violation Rule 3.8(d), and, engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d); and,
- b) By falsely informing the court at the January 10, 2013 hearing that he had "[p]robably" talked to the SBI Crime Lab about De La Cruz's case after the December 2012 hearing, and by stating to the court, in response to the court's question whether the SBI Crime Lab had given any indication of when the DNA report would be forthcoming, that "when you talk to the molecular genetic[s] section, they're saying we're retooling," Defendant made false statements of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and, engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

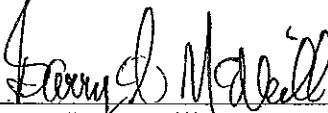
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 26th day of June, 2014.



John M. Silverstein, Chair
Grievance Committee



Barry S. McNeill
Deputy Counsel
State Bar No. 8887
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620

Attorney for Plaintiff